

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHANE D. WALIEZER,

Plaintiff,

v.

ADAM FORTNEY, *et al.*,

Defendants.

CASE NO. **2:21-cv-01100-RAJ-JRC**

ORDER

Plaintiff brought his action under 42 U.S.C. § 1983. Dkt. 5. Before this Court is plaintiff's second motion to appoint counsel. Dkt. 17. As discussed below, this Court denies this motion.

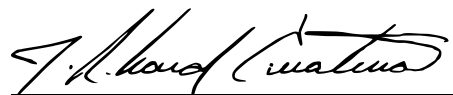
Although indigent defendants in criminal cases are entitled to appointed counsel, there is no constitutional right to appointed counsel in a § 1983 civil action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("Appointment of counsel under this section is discretionary, not mandatory." (citations omitted)). However, in "exceptional circumstances," a district court may

1 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
2 U.S.C. § 1915(d)). *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
3 *grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the  
4 Court must evaluate both “the likelihood of success on the merits [and] the ability of the  
5 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”  
6 *Wilborn v. Escalderon*, 789 F.2d 1328 (9th Cir. 1986) (second alteration added) (citation  
7 omitted). “Neither of these factors is dispositive and both must be viewed together before  
8 reaching a decision on request of counsel under section 1915(d).” *Id.*

9 Here, plaintiff contends that this Court should appoint counsel because he is currently  
10 litigating several other cases *pro se* and because of “COVID 19 outbreaks and quarantine[s].”  
11 Dkt. 17. But this Court’s review of the complaint does not indicate that, at this stage, the issues  
12 in this case are complex. *See* Dkt. 5. Furthermore, despite plaintiff’s involvement in other *pro se*  
13 litigation, the record reflects that, at this stage, he can articulate his claims. *See id.* Additionally,  
14 plaintiff’s allegation that COVID-19 outbreaks and quarantines have frustrated his ability to  
15 litigate this case is conclusory and is not, by itself, an “exceptional circumstance” that would  
16 give rise to appointment of counsel.

17 Accordingly, this Court **DENIES** the second motion to appoint counsel (Dkt. 17) without  
18 prejudice. The Clerk is directed to **SEND** plaintiff a copy of this order.

19 Dated this 29th day of October, 2021.

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22 J. Richard Creatura  
23 Chief United States Magistrate Judge  
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